

W. Scott Mitchell  
Brianne C. McClafferty  
Holland & Hart LLP  
401 North 31st Street  
Suite 1500  
P. O. Box 639  
Billings, Montana 59103-0639  
Telephone: (406) 252-2166  
Fax: (406) 252-1669  
Email: smitchell@hollandhart.com  
bcmclafferty@hollandhart.com

ATTORNEYS FOR DEFENDANT  
ONEOK, INC.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

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|                |   |                                |
|----------------|---|--------------------------------|
| MISTY METCALF, | ) | No. 1:18-cv-00011-SPW-TJC      |
|                | ) |                                |
| Plaintiff,     | ) | <b>DEFENDANT ONEOK, INC.’S</b> |
| vs.            | ) | <b>PRELIMINARY PRETRIAL</b>    |
|                | ) | <b>STATEMENT</b>               |
| ONEOK, INC.,   | ) |                                |
|                | ) |                                |
| Defendant.     | ) |                                |

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Defendant ONEOK, Inc. (“ONEOK”), by and through its counsel of record, Holland & Hart LLP, hereby submits its Preliminary Pretrial Statement pursuant to this Court’s Order of January 31, 2018, Fed. R. Civ. P. 26(a)(1) and L.R. 16.2(b)(1).

**I. BRIEF FACTUAL OUTLINE OF CASE.**

ONEOK is a midstream service provider that connects supply basins with key market centers. As part of its operations, ONEOK enters into Enterprise Agreements for Right-of-Way Services with entities in Oklahoma, Texas, Kansas and North Dakota, Montana, Colorado and Wyoming for right-of-way services (“Right-Of-Way Companies”). These Right of Way Companies provide services to ONEOK, pursuant to their respective agreements, through the Right-Of-Way Companies’ employees or agents.

One of the Right-Of-Way Companies with which ONEOK has an Enterprise Agreement for Right-Of-Way Services is U.S. Land Professionals, Inc. (“U.S. Land”). ONEOK receives invoices from U.S. Land for services it performs. Plaintiff Misty Metcalf was an employee or independent contractor for U.S. Land who performed work on ONEOK projects in Montana and North Dakota. ONEOK did not pay Misty Metcalf directly for work she performed as an employee or independent contractor of U.S. Land. Misty Metcalf was not an ONEOK employee.

**II. THE BASIS FOR FEDERAL JURISDICTION AND FOR VENUE IN THE DIVISION.**

ONEOK removed this case on January 26, 2018 pursuant to 28 U.S.C. §§ 1332 and 1441 because it is a civil action brought in state court of which such United States District Court has original jurisdiction. (Doc. 1.) The parties to this

action are, therefore, citizens and residents of different states and meet the diversity of citizenship requirement set forth in 28 U.S.C. § 1332(a)(1). The amount of controversy is greater than \$75,000, thus, the matter in controversy exceeds the minimal jurisdictional requirement set forth in 28 U.S.C. § 1332(a).

Plaintiff's Complaint was filed in Richland County, Montana Seventh Judicial District. Richland County falls within the Billings Division pursuant to L.R. 1.2(c)(1).

**III. FACTUAL BASIS OF EACH CLAIM OR DEFENSE ADVANCED BY THE PARTY AND LEGAL THEORY UNDERLYING EACH CLAIM OR DEFENSE INCLUDING, WHERE NECESSARY TO A REASONABLE UNDERSTANDING OF THE CLAIM OR DEFENSE, CITATIONS TO AUTHORITY.**

A. Plaintiff's Complaint fails to state a claim against ONEOK upon which relief can be granted. Plaintiff was not an employee of ONEOK during the relevant time period, and thus ONEOK could not have discharged Plaintiff. An employment relationship must exist for the Wrongful Discharge from Employment Act to apply. *See Great Falls Clinic LLP v. Montana Eighth Jud. Dist. Ct.*, 2016 MT 245, ¶ 10 385 Mont. 95, 381 P.3d 550 (Mont. 2016).

B. Plaintiff may have failed in her attempt to mitigate any alleged damages. ONEOK will require discovery into Plaintiff's mitigation efforts, if Plaintiff's claim survives summary judgment.

C. Plaintiff's damages, if any, were caused by her own conduct, acts and omissions and not by any conduct of ONEOK.

D. Plaintiff's claims may be barred by the applicable statute of limitations. A action brought pursuant to the Wrongful Discharge from Employment Act must be filed within one year after the date of discharge. Mont. Code Ann. § 39-2-911(1).

#### **IV. COMPUTATION OF DAMAGES.**

ONEOK seeks no damages in this action.

#### **V. THE PENDENCY OR DISPOSITION OF ANY RELATED STATE OR FEDERAL LITIGATION.**

ONEOK is not aware of any related state or federal litigation with respect to this matter.

#### **VI. PROPOSED STIPULATIONS OF FACT.**

A. ONEOK entered into an Enterprise Agreement for Right-of-Way Services with U.S. Land Professionals, Inc. ("U.S. Land").

B. U.S. Land provides right-of-way services to ONEOK, pursuant to the agreement.

C. Plaintiff Misty Metcalf was an employee or independent contractor for U.S. Land who performed work on ONEOK projects.

D. ONEOK never paid Misty Metcalf directly for work she performed as an employee or independent contractor of U.S. Land.

E. At the time of the alleged discharge, Misty Metcalf was not an employee of ONEOK.

**VII. PROPOSED DEADLINES RELATING TO JOINDER OF PARTIES OR AMENDMENT OF PLEADINGS.**

Pursuant to the parties' Joint Discovery Plan, the parties propose a deadline of May 11, 2018 to join additional parties and/or amend the pleadings without leave of Court.

**VIII. IDENTIFICATION OF CONTROLLING ISSUES OF LAW SUITABLE FOR PRETRIAL DISPOSITION.**

ONEOK intends to immediately move for summary judgment on the basis that the Complaint sets forth a single count of an alleged wrongful discharge under the WDEA. ONEOK was not Misty Metcalf's employer and thus could not discharge her. *See* Mont. Code Ann. § 39-2-903; *Great Falls Clinic LLP v. Montana Eighth Jud. Dist. Ct.*, 2016 MT 245, ¶ 10 385 Mont. 95, 381 P.3d 550 (Mont. 2016). The Wrongful Discharge from Employment Act applies only to employers. *Id.* ONEOK believes this issue is suitable for pretrial disposition.

**IX. THE NAME AND CITY AND STATE OF CURRENT RESIDENCE OF EACH INDIVIDUAL KNOWN OR BELIEVED TO HAVE INFORMATION THAT MAY BE USED IN PROVING OR DENYING ANY PARTY'S CLAIMS OR DEFENSES, AND A SUMMARY OF THAT INFORMATION.**

A. Walt Hoppensteadt, ONEOK, Inc., Real Estate Services Department

c/o W. Scott Mitchell  
Holland & Hart LLP  
401 North 31st Street

Suite 1500  
P. O. Box 639  
Billings, Montana 59103-0639  
Telephone: (406) 252-2166

Mr. Hoppensteadt has knowledge and information related to the Enterprise Agreement for Right of Way Service that ONEOK entered into with U.S. Land Professionals, Inc. and the services provided to ONEOK pursuant to said agreement.

1. Misty Metcalf  
c/o Brandon C. Hartford  
Hartford Law Office  
2722 3rd Avenue North, Suite 245  
P.O. Box 3453  
Billings, MT 59103  
Telephone: (406) 839-9330

Ms. Metcalf presumably has information and knowledge regarding her claims in this matter.

**X. THE SUBSTANCE OF ANY INSURANCE AGREEMENT THAT MAY COVER ANY RESULTING JUDGMENT.**

ONEOK is not aware of any insurance that would provide coverage in the circumstances of a resulting judgment.

**XI. THE STATUS OF ANY SETTLEMENT DISCUSSIONS AND PROSPECTS FOR COMPROMISE OF THE CASE.**

ONEOK intends to move for summary judgment on the grounds that it was not Misty Metcalf's employer. ONEOK believes that prior to any settlement discussions it must be determined whether Plaintiff was an employee of ONEOK.

**XII. SUITABILITY OF SPECIAL PROCEDURES.**

ONEOK does not believe any special procedures are necessary.

Dated this 15th day of March, 2018.

/s/ *Brianne C. McClafferty*

Holland & Hart LLP

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